

STATE OF MICHIGAN
COURT OF APPEALS

KEITH DOETSCH,

Plaintiff-Appellee,

v

ALLEN GOLDEN,

Defendant-Appellant,

and

CITY OF STERLING HEIGHTS and
KEVIN ERNST,

Defendants-Non-Parties.

UNPUBLISHED

January 31, 2003

No. 227711

Macomb Circuit Court

LC No. 93-002932-NO

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

COOPER, J. (*dissenting*).

I respectfully dissent from the opinion of my colleagues.

In this case, the trial judge as well as the jurors had the ability to evaluate the witnesses as they testified. Upon a complete review of the record, it is clear that Officer Golden gave several versions of the incident in question and was accordingly impeached by his prior testimony. Officer Golden, who was an evidence technician, admitted that he was unfamiliar with the law regarding reasonable cause to stop a citizen, and he further admitted he had no reason to suspect that plaintiff was doing anything wrong. He admitted he had no evidence that plaintiff was armed or dangerous. While the officer observed shotgun shells in the bag plaintiff was carrying, there was no reasonable expectation that he had a weapon the size of a shotgun concealed about his person.

Plaintiff was acquitted of criminal charges in this matter. The trial judge in this civil case denied defendant's motion for directed verdict. A civil jury found in his favor and against the defendant police officer. It is clear that innumerable triers of fact obviously did not believe the testimony of the defendant.

The recent phenomena of reviewing courts asserting their dispassionate opinions of the evidence over the triers of fact who were actually present and able to observe the witness' demeanor is untenable in a court system founded upon the right to trial by jury.

I would affirm.

/s/ Jessica R. Cooper